IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8979 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

SUMANBEN NARENDRABHAI SOLANKI

Versus

COMMISSIONER OF ADIJATI VIKAS

Appearance:

MR MM PARMAR for MR PH PATHAK for Petitioner

MS DS PANDIT AGP for Respondents

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 09/07/2001

ORAL JUDGEMENT

1. RULE. Learned Assistant Government Pleader Ms. D.S.Pandit waives service of Rule for the respondents.

2. The petitioner, a sweeper, directly employed under the District Social Welfare Officer, had to file

this petition simply and substantially for the purpose of having the award in her favour made by the Labour Court, Bharuch in Reference (LCB) No.156/93 dated 26.9.1997 implemented. The relief granted by the Labour Court was that of reinstatement with full backwages and costs after observing in the award that the respondent-employer did not remain present before the Court and did not lead any evidence. The respondent-employer never cared either to challenge the aforesaid award or to have it set aside by taking up appropriate proceeding. The petitioner made several representations for implementation of the award and for taking action for breach of the award. Thus, a final and binding award remained on paper and the petitioner was required to approach this Court by way of this petition. The learned counsel for the petitioner admitted that another Miscellaneous Civil Application for contempt of court is also filed by the petitioner, but the same is proposed to be withdrawn.

3. In this matter entertained firstly on 22.11.1999 when Notice to the respondent returnable on 23.12.1999 was issued, the Deputy Director working in the office of the Commissioner, Adijati Development, has filed an affidavit-in-reply dated 8.2.2001 stating that the award in question is already implemented and the petitioner has resumed her duty as per the order dated 15.12.2000 of this Court. It is also stated by the learned Assistant Government Pleader that the amount of arrears of backwages is also paid to the petitioner on 5.1.2001. In this background it was submitted by the learned Assistant Government Pleader that the cause of action did not survive and the petition requires to be disposed accordingly.

4. The learned counsel Mr.M.M.Parmar appearing for Mr.P.H.Pathak submitted that the poor female safai worker employed under the Welfare Department has been subjected to treatment of complete disregard of her right as also the order of the Labour Court. It was further submitted that it was only after this Court having entertained the petition and passed a speaking order on 27.3.2000 (Coram: Mr.Justice H.K.Rathod) directing to reinstate the petitioner in service that the award was belatedly implemented. In fact, even after the aforesaid direction of this Court, the Secretary of Social Welfare Department was required and ordered to remain personally present under the peril of issuance of bailable warrant and it was only thereafter that the award has come to be implemented as stated by the learned Assistant Government Pleader.

5. The factual background as above leaves no room for doubt that a clearly callous attitude is adopted by the respondents in complete disregard of the judicial orders as well as the suffering of a poor female safai worker, who, in the nature of things, can hardly afford any litigation. The learned counsel for the petitioner is, therefore, justified in urging the Court to award special costs and interest on the amount of backwages which were withheld without any plausible reason or justification. It is equally true that by passing any order imposing pecuniary responsibility on a Government department, it is only the public exchequer that suffers. It is, therefore, necessary that the liability of individual officers who failed to treat the judicial

orders with due respect should be fixed and the amount unnecessarily required to be paid should be recovered from them. This Court has passed several orders in similar matters where the officer concerned could be identified and special liability could be fixed. However, as in the facts of the present case the respondents are joined by designations, it is not possible to fix liability of any particular individual or officer and it has to be left to the Government to do that exercise.

6. In these facts and circumstances, the petition is partly allowed. The amount of backwages is stated to have been paid for the period from 1.3.1993 to 14.12.2000 even as the award was required to be implemented in the year 1997 after the same was published and came into effect. The petitioner having been paid wages for the subsequent period during which she was not allowed to work, it would be improper and difficult to calculate the amount of interest on any particular principal amount. The petition is, however, partly allowed and the respondent No.2 is directed to pay to the petitioner Rs.5,000/- (rupees five thousand) by way of costs. It will be open for the appropriate authorities to recover the above amount of costs as also the amount of backwages paid to the petitioner from the officer or officers who were in-charge and responsible for not defending the case

before the Labour Court and for the delay in implementation of the aforesaid award. Rule is made absolute accordingly.

Sd/-
09.7.2001 (D.H.Waghela, J.)
(KMG Thilake)